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Filing date: **06/04/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91164764
Party	Plaintiff Brink's Network, Incorporated
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Date	06/04/2010
Attachments	Motion for Leave to File Third Amended Notice of Opposition.pdf (6 pages) (226675 bytes) Third Amended Notice of Opposition.pdf (9 pages)(813355 bytes) Memo in Support of Motion for Leave to File Third Amended Notice of Opposition.pdf (76 pages)(3787358 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BRINK'S NETWORK, INCORPORATED)	
)	
Opposer)	
)	
v.)	Opposition No. 91164764
)	
BRINKMANN CORPORATION)	
)	
Applicant)	

**MOTION FOR LEAVE TO FILE THIRD
AMENDED NOTICE OF OPPOSITION**

Opposer Brink's Network, Inc., in accordance with Rule 15 Fed. R. Civ. P. and § 2.107(a) of the Trademark Rules of Practice, respectfully moves the Trademark Trial and Appeal Board for leave to amend the Notice of Opposition in the subject proceeding. The Third Amended Notice of Opposition submitted herewith pleads ownership of Registration Nos. 2,585,259, 2,582,146 and 3,548,760 of the mark BRINKS in various forms; identifies more clearly Opposer's related companies which are using the mark BRINKS in various forms upon which Opposer is relying; and removes the claim of a fraudulent representation as to the date of Applicant's first use of the mark BRINKMANN in connection with the specific goods in International Class 9 in the opposed application which are the subject of the present opposition.

The grounds for this motion are as follows:

(1) The opposed application, filed on January 17, 2003, seeks registration of the mark BRINKMANN for the following goods in Class 9: “home security systems and components therefor, namely, motion sensitive home security lights, detectors, receivers, transmitters, adapters and wall mount brackets; batteries; wall mount brackets for battery chargers and flashlight; cooking thermometers; electrical extension cords; electric connectors; electric converters; electronic mineral and metal detectors, flashlight and spotlight accessories sold together or separately, namely, transmitters, lighter plugs and filter caps.”

(2) The Notice of Opposition in this proceeding, filed on April 1, 2005, is directed only to registration of the mark BRINKMANN for home security systems and components therefor, namely motion sensitive home security lights, detectors, receivers, transmitters, adapters and wall mount brackets in International Class 9 (hereinafter “home security systems and components”).

(3) The original, Amended and Second Amended Notices of Opposition each allege Opposer’s use of the mark BRINKS, alone and in combination with other words and design(s), in connection with residential and commercial security equipment.

(4) The following three registrations cover the mark BRINKS in various forms for residential and commercial security equipment:

- (a) Registration No. 2,585,259 of BRINKS & Design for keyed and combination metal locks and hasps

(b) Registration No. 2,582,146 of the mark BRINKS for keyed and combination metal locks and hasps

(c) Registration No. 3,548,670 of BRINKS & Design for timers.

(5) Brink's Home Security, Inc., one of Opposer's related companies identified in the original and Amended Notices of Opposition, has recently undergone a name change to Broadview Security, Inc. ("Broadview"). Paragraphs (4), (5) and (7) in the Third Amended Notice of Opposition reflect the name change in question.

(6) Opposer is relying upon use of the mark BRINKS in various forms by another related company Hampton International Products Corporation ("Hampton") pursuant to a series of License Agreements, all of which have been disclosed to Applicant in response to discovery requests. Paragraphs (4), (5) and (8) in the Third Amended Notice of Opposition specifically identify Hampton as one of Opposer's related companies and allege that Opposer is relying upon such usage which inures to its benefit.

(7) The prior amended Notices of Opposition asserted a claim that Applicant had committed a fraudulent representation in connection with the date of first use of home security systems and components as set forth in the opposed application. By an Order entered by the Board on August 7, 2009, Opposer was denied leave to assert that claim. Accordingly, the Third Amended Notice of Opposition deletes the claim of a fraudulent representation.

(8) Granting Opposer leave to file the Third Amended Notice of Opposition will not prejudice Applicant because Applicant is fully aware of:

- (a) Opposer's assertion of and reliance upon its rights in the mark BRINKS in various forms for residential and commercial security equipment which encompasses the goods described in Registration Nos. 2,585,259, 2,582,146 and 3,548,760;
- (b) The Broadview name change and related structural changes in that company; and
- (c) The use of the mark BRINKS in various forms by Hampton pursuant to a license and Opposer's intent to rely on such usage.

(9) Applicant has noticed the depositions of Broadview and Hampton pursuant to subpoenas which will take place on June 29, 2010 and June 16, 2010, respectively. The deposition subject matters specified in those subpoenas are directed in pertinent part to those parties' use of the mark BRINKS in connection with all goods which would include those specified in Registration Nos. 2,585,259, 2,582,146 and 3,548,760.

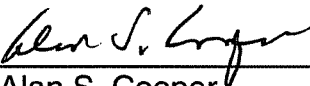
(10) Accordingly, Applicant will have an ample opportunity to take discovery directed to the use of the marks specified in Registration Nos. 2,585,259, 2,582,146 and 3,548,760 as well as the use of the BRINKS marks by Broadview and Hampton before the close of discovery which is presently set for July 2, 2010. However, in order to avoid any possible claim of prejudice by Applicant resulting from the Third Amended Notice of Opposition, Opposer

requests that the Board extend discovery and all other dates for a period of sixty (60) days following its decision on the present motion.

For the reasons set forth above, Opposer requests that the Board grant its Motion for Leave to File Third Amended the Notice of Opposition. A Memorandum in support of Opposer's Motion and the Third Amended Notice of Opposition are submitted concurrently herewith.

BRINK'S NETWORK, INC.

Date: June 4, 2010

By: 

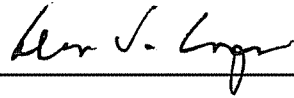
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Attorneys for Opposer

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Motion for Leave to File Third Amended Notice of Opposition was served on the following attorneys of record for Applicant by Federal Express overnight courier service on this 4th day of June, 2010:

Gary A. Clark, Esq.
Susan Hwang, Esq.
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 48th Floor
Los Angeles, California 90071



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BRINK'S NETWORK, INCORPORATED)	
)	
Opposer)	
)	
v.)	Opposition No. 91164764
)	
THE BRINKMANN CORPORATION)	
)	
Applicant)	

THIRD AMENDED NOTICE OF OPPOSITION

Brink's Network, Incorporated, a Delaware corporation, located and doing business at 203 Bancroft Building, 3411 Silverside Road, Wilmington, Delaware 19810 (hereinafter "Opposer"), believes that it will be damaged by registration of the mark shown in Application Serial No. 76/483,115 with respect to certain of the goods described in said Application as alleged more fully below, and hereby opposes same.

The grounds for the opposition are as follows:

BACKGROUND

(1) Application Serial No. 76/483,115 (hereinafter the "opposed application"), as amended pursuant to the Order of the Board entered in this proceeding on June 28, 2005, seeks registration of the mark BRINKMANN for, *inter alia*, home security systems and components therefor, namely, motion sensitive home security lights, detectors, receivers, transmitters, adapters and wall mount brackets in International Class 9 (hereinafter "home security systems and components").

(2) The opposed application was filed on January 17, 2003, based on a claim of Applicant's use of the mark BRINKMANN in interstate commerce in connection with home security systems and components on June 12, 1978.

(3) On information and belief, the June 12, 1978 date of first use stated in the opposed application with respect to the goods in International Class 9 is not applicable to the home security systems and components sold by Applicant under the mark BRINKMANN.

(4) Long prior to the January 17, 2003 filing date of the opposed application and the true date of Applicant's first use of the mark BRINKMANN in connection with home security systems and components, Opposer's predecessor adopted and used, and Opposer and its related companies Brink's, Incorporated, Broadview Security Inc. and Hampton International Products Corporation are still using the trade names, trademarks and service marks BRINK'S and BRINKS (hereinafter collectively "BRINK'S"), alone and/or in combination with other words and design(s), in interstate commerce for commercial and residential security systems and equipment; residential and commercial security alarm and monitoring services; check and payroll processing and security services; and convention, exhibit and performance ticket sales and security services.

(5) In accordance with § 5 of the Federal Trademark Act, all use of the trade name, trademark and service mark BRINK'S, alone and/or in combination with other words and design(s), by Opposer's related companies Brink's, Incorporated, Broadview Security Inc. and Hampton International Products Corporation inures to the benefit of Opposer.

(6) Opposer is the owner of the trade name, trademark and service mark BRINK'S. Opposer and its predecessor and related companies have continuously used

the trade name and mark BRINK'S, alone and/or in combination with other words and design(s), for commercial and residential security systems and equipment and related residential and commercial security alarm and monitoring services, among other goods and services, since long prior to the filing date of the opposed application and the true date of first use of the mark BRINKMANN by Applicant in connection with home security systems and components.

(7) Opposer's related company Broadview Security Inc. advertises, offers for sale and sells numerous residential and commercial security services and related products under the trade name, trademark and service mark BRINK'S, alone and/or in combination with other words and design(s).

(8) Opposer's related company Hampton International Products Corporation advertises, offers for sale and sells numerous residential and commercial security products under the trademark BRINKS, alone and/or in combination with other words and design(s).

(9) By virtue of the prior and continuous advertising and sales of commercial and residential security systems and equipment and related services under the mark BRINK'S, and the maintenance of premium quality standards relating thereto, purchasers of such goods and services and others have come to recognize the mark BRINK'S as a singular, highly distinctive indication of origin, as a consequence of which Opposer has established valuable goodwill and exclusive rights in this mark.

(10) The mark BRINK'S, alone and/or in combination with other words and design(s), had become exceedingly well-known and a famous mark within the meaning of § 43(c)(2)(A) of the Federal Trademark Act long prior to the filing date of the opposed

application and the true date of Applicant's first use of the mark BRINKMANN in connection with home security systems and components.

(11) Opposer's related company Brink's, Incorporated duly registered the mark BRINKS & Design for security transportation, namely, armored car transport services of currency, securities and other valuables; domestic and international air courier services; receiving and cashing checks for others, coin processing and wrapping and change services; payroll preparation and consolidation of deposits for others; cash maintenance of bank automatic teller stations; food stamp distribution services; selling tickets and handling proceeds from conventions, exhibits and performances for others in the United States Patent and Trademark Office under Registration No. 1,313,790 which issued January 8, 1985 and has been duly renewed. Opposer is the record owner of Registration No. 1,313,790 by virtue of an assignment recorded in the Assignment Branch on April 19, 1996 at Reel 1452, Frame 0600.

(12) Opposer's related company Brink's, Incorporated duly registered the mark BRINK'S (Stylized) for receiving checks; cashing the same; making up payrolls; carrying same or other moneys or securities; guarding and protecting same and paying payrolls; handling clearings; selling tickets; handling proceeds form conventions, exhibitions, and performances; repairing safes, chests, cash protectors and similar equipment in the United States Patent and Trademark Office under Registration No. 529,622 which issued August 22, 1950 and has been duly renewed. Opposer is the record owner of Registration No. 529,622 by virtue of an assignment recorded in the Assignment Branch on April 19, 1996 at Reel 1452, Frame 0600.

(13) Opposer's related company Brink's, Incorporated duly registered the mark BRINK'S for security transportation, namely, armored car transport services of currency, securities, and other valuables; domestic and international air courier services; air transport and air freight of goods in the United States Patent and Trademark Office under Registration No. 1,309,375 which issued December 11, 1984 and has been duly renewed. Opposer is the record owner of Registration No. 1,309,375 by virtue of an assignment recorded in the Assignment Branch on April 19, 1996 at Reel 1452, Frame 0600.

(14) Opposer's related company Brink's, Incorporated duly registered the mark BRINK'S HOME SECURITY for security alarm and monitoring system services in the United States Patent and Trademark Office under Registration No. 1,412,587 which issued October 7, 1986. Opposer is the record owner of Registration No. 1,412,587 by virtue of an Assignment recorded in the assignment Branch on April 19, 1996 at Reel 1452, Frame 0600.

(15) Opposer's related company Brink's, Incorporated duly registered the mark BRINKS & Design for security alarm and monitoring system services in the United States Patent and Trademark Office under Registration No. 1,411,610 which issued on September 30, 1986. Opposer is the record owner of Registration No. 1,411,610 by virtue of an assignment recorded in the assignment Branch on April 19, 1996 at Reel, 1452, Frame 0600.

(16) Opposer duly registered the mark BRINKS HOME SECURITY & Design for residential and commercial metal safes; keyed and combination metal locks; non-metal residential and commercial safes under Registration No. 2,330,884 which issued March 21, 2000.

(17) Opposer duly registered the mark BRINKS for keyed and combination metal locks and hasps under Registration No. 2,582,146 which issued June 18, 2002.

(18) Opposer duly registered the mark BRINKS & Design for keyed and combination metal locks and hasps under Registration No. 2,585,259 which issued June 25, 2002.

(19) Opposer duly registered the mark BRINKS & Design for timers under Registration No. 3,548,670 which issued December 23, 2008.

(20) Registration Nos. 1,313,790, 529,622, 1,309,375, 1,412,587, 1,411,610, 2,330,884, 2,582,146, 2,585,259 and 3,548,670 are *prima facie* evidence of the validity thereof and Opposer's ownership and exclusive right to use the marks BRINKS, BRINK'S, BRINKS & Design, BRINK'S (Stylized), BRINKS HOME SECURITY & Design and BRINKS HOME SECURITY, in commerce and are constructive notice of Opposer's ownership thereof, all as provided by §§ 7(b) and 22 of the Federal Trademark Act of 1946, as amended. The right to use the marks BRINKS & Design, BRINK'S (Stylized), BRINK'S, BRINK'S HOME SECURITY, BRINKS and BRINKS HOME SECURITY & Design having become incontestable, Registration Nos. 1,313,790, 529,622, 1,309,375, 1,412,587, 1,411,610, 2,330,884, 2,582,146 and 2,585,259 are conclusive evidence of Opposer's exclusive right to use the marks shown therein in commerce as provided by §§ 15 and 33(b) of the Federal Trademark Act.

**OPPOSITION BASED ON LIKELIHOOD
OF CONFUSION PURSUANT TO § 2(d)**

(21) The commercial and residential security systems and equipment, and related residential and commercial security alarm and monitoring services described in Opposer's Registration Nos. 1,313,790, 529,622, 1,309,375, 1,412,587, 1,411,610,

2,330,884, 2,582,146, 2,585,259 and 3,548,670 and the home security systems and components therefor described in the opposed application are commercially related, and are likely sold and/or rendered to the same or overlapping classes of purchasers. Therefore, purchasers, prospective purchasers and others are likely to be confused, mistaken or deceived into the belief, contrary to fact, that Applicant's home security systems and components therefor sold under the mark BRINKMANN emanate from and/or are in some way sponsored or approved by Opposer and/or that Applicant is somehow affiliated with Opposer, thereby damaging Opposer.

(22) Applicant is not lawfully entitled to the registration which it seeks for the reason, *inter alia*, that Applicant's mark BRINKMANN, as used in connection with the home security systems and components therefor described in the opposed application, so resembles Opposer's previously used and/or registered marks BRINK'S, BRINKS, BRINK'S & Design, BRINK'S (Stylized), BRINK'S HOME SECURITY, and BRINKS HOME SECURITY & Design as to be likely to cause confusion, to cause mistake or to deceive within the meaning of § 2(d) of The Federal Trademark Act, thereby damaging Opposer.

**OPPOSITION BASED ON LIKELIHOOD
OF DILUTION PURSUANT TO § 13(a)**

(23) Applicant is not lawfully entitled to the registration which it seeks for the reason, *inter alia*, that its use of the mark BRINKMANN in connection with the home security systems and components described in the opposed application is likely to dilute the distinctiveness of Opposer's famous marks BRINK'S, BRINKS, BRINK'S & Design, BRINK'S (Stylized), BRINK'S HOME SECURITY, and BRINKS HOME SECURITY & Design within the meaning of § 43(c) of the Federal Trademark Act, as amended.

OPPOSITION BASED ON MISUSE
OF REGISTRATION SYMBOL

(24) Attached hereto as Exhibit A is a true copy of a specimen submitted by Applicant in connection with the opposed application showing use of the mark BRINKMANN in connection with home security systems and components that displays the federal statutory registration symbol ® in association with the mark BRINKMANN.

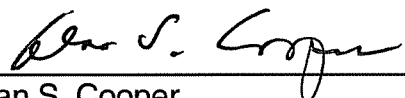
(25) Applicant does not own a subsisting federal registration of the mark BRINKMANN that covers home security systems and components.

(26) Applicant's use of the federal statutory notice of registration symbol ® in association with the mark BRINKMANN as shown in Exhibit A constitutes a misuse of that symbol in violation of § 29 of The Federal Trademark Act and deceives the consuming public into believing that the mark is registered, thereby damaging Opposer.

WHEREFORE, Opposer believes that the present opposition should be sustained and the registration of Applicant's mark refused.

BRINK'S NETWORK, INCORPORATED

Dated: June 4, 2010

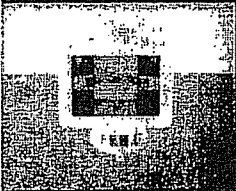
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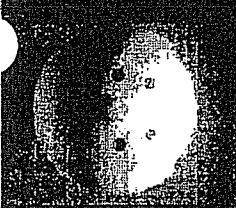
BRINKMANN

Home Security

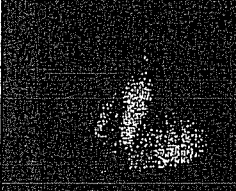
Motion Activated Lighting System



Special two-way mounting design is suitable for ceilings and under eaves as well as wall mounting.



Easy to adjust, no tools are needed. Lighting time is adjustable for up to 12 minutes. Easy control allows you to set at what darkness level lights will come on.



The area of detection can be adjusted to cover over 1,500 sq. ft. with the wide angle sensor seeing up to 40 ft. away in a 110° arc.

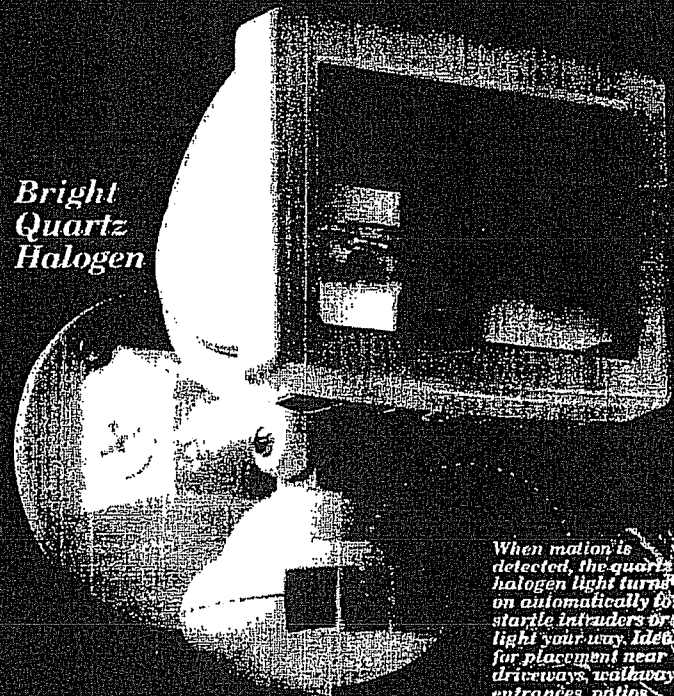
BRINKMANN

Home Security

Motion Activated Lighting System

150 Watt/110°
When used for a 110° Quartz Halogen light included

**Bright
Quartz
Halogen**



When motion is detected, the quartz halogen light turns on automatically to startle intruders or light your way. Ideal for placement near driveways, walkways, entrances, patios and pools.

Pre-assembled

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BRINK'S NETWORK, INCORPORATED)	
)	
Opposer)	
)	
v.)	Opposition No. 91164764
)	
BRINKMANN CORPORATION)	
)	
Applicant)	

MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO FILE THIRD
AMENDED NOTICE OF OPPOSITION

I. INTRODUCTION

This matter is before the Board on the motion of Opposer Brink's Network, Inc., in accordance with Rule 15 Fed. R. Civ. P. and § 2.107(a) of the Trademark Rules of Practice, for leave to file a Third Amended Notice of Opposition in the subject proceeding. The Third Amended Notice of Opposition pleads Opposer's ownership of Registration Nos. 2,585,259, 2,582,146 and 3,548,760 of the mark BRINKS in various forms; identifies more clearly Opposer's related companies which are using the mark BRINKS in various forms upon which Opposer is relying; and removes the claim of a fraudulent representation as to the date of Applicant's first use of the mark BRINKMANN in connection with the specific goods in International Class 9 in the opposed application which are the subject of the present opposition.

As discussed more fully below, the allegations added by the Third Amended Notice of Opposition clarify certain earlier allegations with respect to the related-company usage upon which Opposer is relying in this proceeding. The Third Amended Notice of Opposition also asserts Opposer's ownership of three registrations of the mark BRINKS in various forms for residential and commercial security equipment which is predicated upon allegations of the use of the mark BRINKS for such goods in the earlier Notices of Opposition.

As a result of Opposer's discovery responses, Applicant is well aware of the basic factual predicates for these additional allegations and is actually taking discovery this month directed thereto. Accordingly, there is no genuine basis for any claim that the filing of the Third Amended Notice will result in any prejudice to Applicant. However, to avoid even any possibility in that respect, Opposer is requesting the Board to extend discovery for a period of sixty (60) days after its decision on the pending motion.

II. BACKGROUND

The opposed application was filed on January 17, 2003, and is based on a claim of use of the mark BRINKMANN in commerce under § 1(a) of the Federal Trademark Act. The opposed application seeks registration of the mark BRINKMANN for the following goods in Class 9: "home security systems and components therefor, namely, motion sensitive home security lights, detectors, receivers, transmitters, adapters and wall mount brackets; batteries; wall mount brackets for battery chargers and flashlight; cooking thermometers; electrical extension cords; electric connectors; electric converters; electronic mineral and

metal detectors, flashlight and spotlight accessories sold together or separately, namely, transmitters, lighter plugs and filter caps". The Notice of Opposition in this proceeding was filed on April 1, 2005, and is directed only to registration of the mark BRINKMANN for "home security systems and components therefor, namely, motion sensitive home security lights, detectors, receivers, transmitters, adapters and wall mount brackets" in International Class 9 (hereinafter "home security systems and components").

The original and each of the previously-filed amended Notices of Opposition allege Opposer's use of the mark BRINKS, alone and in combination with other words and design(s), in connection with *inter alia* residential and commercial security equipment and products.¹ Based on and consistent with those earlier allegations of use of the mark BRINKS in various forms for residential and commercial security equipment and products, ¶¶ (17), (18) and (19) of the Third Amended Notice of Opposition allege Opposer's ownership of the following three registrations which cover such goods:

- (1) Registration No. 2,585,259 of the mark BRINKS & Design for keyed and combination metal locks and hasps;
- (2) Registration No. 2,582,146 of the mark BRINKS for keyed and combination metal locks and hasps; and

¹ Specifically, ¶¶ (4), (17) and (19) of the original Notice of Opposition and ¶¶ (4) and (5) of the Amended Notice of Opposition and Second Amended Notice of Opposition each allege use of the mark BRINKS in various forms for commercial and residential security equipment and products.

- (3) Registration No. 3,548,670 of the mark BRINKS & Design for timers.

As Applicant is well aware through the results of discovery and otherwise, Brink's Home Security, Inc., one of Opposer's related companies identified in the original and amended Notices of Opposition, has undergone a name change to Broadview Security, Inc. ("Broadview"). Paragraphs (4), (5) and (7) in the Third Amended Notice of Opposition reflect the name change in question.

Opposer also is relying on use of the mark BRINKS in various forms by another related company, Hampton International Products Corporation ("Hampton"), pursuant to License Agreements, all of which have been disclosed to Applicant in response to discovery requests. Paragraphs (4), (5) and (8) in the Third Amended Notice of Opposition specifically identify Hampton as one of Opposer's related companies and allege that Opposer is relying upon such usage which inures to its benefit.

Applicant has served subpoenas requiring the discovery depositions of and the production of documents by Broadview² and Hampton.³ The discovery depositions of Broadview and Hampton pursuant to those subpoenas will occur on June 29, 2010 and June 16, 2010, respectively.

The prior amended Notices of Opposition asserted a claim that the opposed application contained a fraudulent representation in connection with the

² True copies of the subpoenas directed to Broadview, dated April 26, 2010, are annexed hereto as collective Appendix A.

³ True copies of the subpoenas directed to Hampton, dated August 10, 2009, are annexed hereto as collective Appendix B.

date of first use of the mark BRINKMANN in connection with home security systems and components therefor. On August 7, 2009, the Board entered an Order denying Opposer leave to assert that claim. Accordingly, the Third Amended Notice of Opposition deletes the prior claim of a fraudulent representation.

III. ARGUMENT

In ruling on motions for leave to file an amended pleading, the Board usually is very liberal in accordance with the requirement of Rule 15 Fed. R. Civ. P. and will grant such motions provided the amended pleading does not prejudice the adverse party. *See, e.g., Commodore Electronics Ltd. v. Cbm Kabushiki Kaisha*, 26 USPQ2d 1503 (TTAB 1993); *United States Olympic Committee v. O-M Bread Inc.*, 26 USPQ2d 1221 (TTAB 1993); *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991). In terms of whether a proposed amendment would prejudice the adverse party, the Board generally looks to the relative timing of the amendment. Where the motion for leave to file an amended pleading is filed prior to the close of the discovery period, there typically is no prejudice to the adverse party because that party will have an opportunity to take discovery on the matters raised in the proposed amended pleading, with the result that such motions generally are granted. *See, e.g., Commodore Electronics Ltd. v. Cbm Kabushiki Kaisha, supra; United States Olympic Committee v. O-M Bread Inc., supra; Focus 21 International Inc. v. Pola Kasei Kogyo Kabushiki Kaisha*, 22 USPQ2d 1316 (TTAB 1992). As discussed more

fully below, there is no basis for Applicant to claim that it would be prejudiced by the filing of the Third Amended Notice of Opposition.

A. APPLICANT WILL NOT BE PREJUDICED BY OPPOSER'S
ASSERTION OF AND RELIANCE ON REGISTRATION NOS.
2,585,259, 2,582,146 and 3,548,760.

Granting Opposer leave to file the Third Amended Notice of Opposition will not prejudice Applicant because Applicant is fully aware of Opposer's assertion of and reliance upon its rights in the mark BRINKS in various forms for residential and commercial security equipment and products which encompass the goods described in Registration Nos. 2,585,259, 2,582,146 and 3,548,760.

Equally important, Applicant will have a full opportunity to take discovery directed to the use of the mark BRINKS in connection with such products at the forthcoming depositions of Hampton and Broadview. It should be noted in this regard that the Rule 30(b)(6) portions of the subpoenas directed to Hampton and Broadview each contain subject matter areas directed to those companies' use of the mark BRINKS in connection with all goods sold under that mark, which obviously includes keyed and combination locks and timers as specified in Registration Nos. 2,585,259, 2,582,146 and 3,548,760.⁴

⁴ Paragraphs 7 and 9 of the Hampton Rule 30(b)(6) subject matter topics are directed to "all licenses with Brink's Network for any Brink's Mark or Brink's Product" and the "identification of each Brink's Mark used by Hampton and each Brink's Product manufactured, advertised, offered for sale or sold by Hampton . . . in the United States from introduction to the present", respectively. See Appendix B, p. 7. Similarly, ¶¶ 4 and 30 of the Broadview Rule 30(b)(6) subject matter topics are directed to the "identification of each Brink's Mark used by Broadview and each Brink's product or Brink's Service advertised, offered for sale or sold by Broadview . . . in the United States from introduction to the present" and "[a]ll licences with Brink's Network [Opposer] for any Brink's Mark or Brink's Product or Brink's Service", respectively. See Appendix A, pp. 6 and 11.

Under these circumstances, the fact that these three registrations were not pleaded earlier does not unduly complicate this proceeding and cannot result in any legitimate claim of prejudice to Applicant. *See, e.g., Cargill, Inc. v. IMC Kalium Ltd.*, 2001 TTAB LEXIS 236, at *3 (TTAB Mar. 19, 2001) (non-precedent decision) (“[B]ecause the trial period has not yet commenced and because we may reopen the discovery period, applicant has not persuaded us that it would suffer undue prejudice by entry of the amended notice of opposition [to include an unpleaded registration].”); *Guardian Life Insurance Co. of America v. Gordian Health Solutions, Inc.*, 2001 TTAB LEXIS 60, at *4 (TTAB Jan. 30, 2001) (non-precedent decision) (“Because the proceeding is still in the pre-trial phase and discovery will be reopened for applicant's benefit as indicated below, applicant will not be prejudiced by the allowance of the amendment [adding allegations of use of opposer's various GUARDIAN marks in connection with its previously unpleaded health-related services].”); *Orlando Food Corp. v. Marbo, Inc.*, 1996 TTAB LEXIS 435, at *4 (TTAB Apr. 3, 1996) (non-precedent decision) (“[G]ranted the motion to amend would not prejudice applicant, inasmuch as the motion simply seeks to have the notice of opposition expanded to include reference to opposer's second registration of ORLANDO which covers additional food items. Moreover, as will be reflected in the attached trial order, there is still time left for discovery.”).⁵

⁵ The USPTO's Official Gazette Notice, dated January 23, 2007, stated that “[a] decision designated as not precedential is not binding upon the TTAB but may be cited for whatever persuasive value it might have.” The three decisions cited above are certainly persuasive in this instance.

B. APPLICANT WILL NOT BE PREJUDICED BY OPPOSER'S MORE SPECIFIC ALLEGATIONS WITH RESPECT TO USE OF THE MARK "BRINKS" BY ITS RELATED COMPANIES BROADVIEW AND HAMPTON

The allegations directed to the use of the mark BRINKS by Opposer's related companies Broadview and Hampton will not adversely impact Applicant because the discovery period in this proceeding is still open. In fact, as noted above, Applicant will be taking the discovery depositions of Broadview and Hampton on June 29 and 16, 2010, respectively, and the documents requested by Applicant's subpoenas will be produced prior to the actual depositions.

C. APPLICANT WILL NOT BE PREJUDICED BY THE TIMING OF THE FILING OF THE PRESENT MOTION

As a result of Opposer's prior discovery responses, Applicant has received basic information regarding the use of the mark BRINKS in various forms by Hampton as well as Broadview and will be taking the discovery depositions of those companies before the close of discovery on July 2, 2010. Accordingly, considering the present status of this proceeding, there is no realistic basis for Applicant to claim that it would be prejudiced by the filing of the Third Amended Notice of Opposition. However, to avoid any possible claim of prejudice by Applicant resulting from the Third Amended Notice of Opposition, Opposer requests that the Board extend discovery and all other dates for a period of sixty (60) days following its decision on the present motion.

IV. CONCLUSION

As indicated above, Applicant will have an ample opportunity to take discovery directed to the use of the marks specified in Registration Nos.

2,585,259, 2,582,146 and 3,548,760 as well as the use of the BRINKS marks by Broadview and Hampton before the close of discovery which is presently set for July 2, 2010. As Applicant will not be prejudiced by the filing of the Third Amended Notice of Opposition, Opposer respectfully requests the Board to grant the present motion.

BRINK'S NETWORK, INC.

Date: June 4, 2010

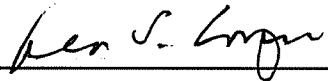
By: 
Alan S. Cooper
Alesha M. Dominique
Howrey LLP
1299 Pennsylvania Avenue, NW
Washington, DC 20004-2402
Tel. (202) 783-0800
Fax (202) 383-7195

Attorneys for Opposer

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Memorandum in Support of Opposer's Motion for Leave to File Third Amended Notice of Opposition was served on the following attorneys of record for Applicant by Federal Express overnight courier service on this 4th day of June 2010:

Gary A. Clark, Esq.
Susan Hwang, Esq.
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 48th Floor
Los Angeles, California 90071



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BRINK'S NETWORK, INCORPORATED,

Opposer,

v.

THE BRINKMANN CORPORATION,

Applicant.

Opposition No. 91164764

**APPLICANT'S NOTICE OF SUBPOENAS FOR PRODUCTION OF DOCUMENTS
AND DEPOSITION OF BRINK'S HOME SECURITY HOLDINGS, INC. DBA
BROADVIEW SECURITY**

TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:

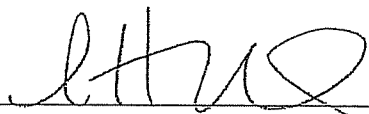
PLEASE TAKE NOTICE that, pursuant to RULE 45 of the FEDERAL RULES OF CIVIL PROCEDURE, Applicant The Brinkmann Corporation is serving subpoenas on Brink's Home Security Holdings, Inc. dba Broadview Security ("Broadview"), copies of which are attached hereto.

PLEASE TAKE FURTHER NOTICE that, pursuant to RULE 45 of the FEDERAL RULES OF CIVIL PROCEDURE, Broadview is requested to produce the documents and things in its custody, possession, or control specified in the Schedule of Documents and Things to the attached document subpoena on May 13, 2010 at 9:00 a.m., at the law offices of Figari & Davenport, L.L.P., 3400 Bank of America Plaza, 901 Main Street, Dallas, Texas 75202.

PLEASE TAKE FURTHER NOTICE that, pursuant to RULES 30(b)(6) and 45 of the FEDERAL RULES OF CIVIL PROCEDURE, Applicant The Brinkmann Corporation will conduct a deposition upon oral examination of Broadview commencing at 9:00 a.m. on May 20, 2010, or such other date and time as the parties may agree, at the law offices of Figari & Davenport, L.L.P., 3400 Bank of America Plaza, 901 Main Street, Dallas, Texas 75202. The deponent is not a natural person and is a party to this action. Pursuant to RULE 30(b)(6) of the FEDERAL RULES OF CIVIL PROCEDURE, Broadview shall designate on or more officers, directors, or managing agents, employees or other persons who consent to testify on its behalf, regarding the subjects described in the Schedule of Testimony Topics to the attached deposition subpoena.

The deposition will be taken before a notary public or other person authorized to administer oaths.

Dated: April 26, 2010




Gary A. Clark, Esq.
Susan Hwang, Esq.
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 48th Floor
Los Angeles, California 90071
Tel.: (213) 620-1780
Fax: (213) 620-1398

Attorneys for Applicant
THE BRINKMANN CORPORATION

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing "Applicant's Notice Of Subpoenas for Production of Documents and Deposition Of Brink's Home Security Holdings, Inc. dba Broadview Security" by placing a copy in the United States Mail, postage pre-paid, addressed as follows: Alan S. Cooper, counsel for Opposer, at Howrey LLP, 1299 Pennsylvania Avenue, N.W., Washington, DC 20004.

Dated: April 26, 2010



SUSAN HWANG

UNITED STATES DISTRICT COURT
for the
Northern District of Texas

BRINK'S NETWORK, INCORPORATED
Plaintiff
v.

THE BRINKMANN CORPORATION
Defendant

Civil Action No. 91164764

(If the action is pending in another district, state where:
USPTO TTAB)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: BRINK'S HOME SECURITY HOLDINGS, INC. DBA BROADVIEW SECURITY
8880 Esters Blvd.
Irving, TX 75063

☒ **Testimony:** YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

SEE ATTACHED SCHEDULE OF TESTIMONY TOPICS

Place: Figari & Davenport, L.L.P. 3400 Bank of America Plaza 901 Main Street Dallas, Texas 75202	Date and Time: May 20, 2010, 9:00 a.m.
--	---

The deposition will be recorded by this method: Stenographic

☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: April 27, 2010

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

Michael G. Brown

The name, address, e-mail, and telephone number of the attorney representing (name of party) _____
The Brinkmann Corporation, who issues or requests this subpoena, are:
Michael G. Brown, Esq.
Figari & Davenport, L.L.P.
3400 Bank of America Plaza, 901 Main Street, Dallas, Texas 75202; Tel.: (214) 939-2000; mike.brown@figdav.com

Civil Action No. 91164764

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____

☐ I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of

\$ _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) **Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).



**SCHEDULE OF TESTIMONY TOPICS
TO SUBPOENA TO
BRINK'S HOME SECURITY HOLDINGS, INC. DBA BROADVIEW SECURITY
8880 ESTERS BLVD
IRVING, TX 75063
TEL. (972) 871-3500**

This Schedule of Testimony Topics sets forth the matters below on which Applicant Brinkmann seeks examination from Brink's Home Security Holdings, Inc. dba Broadview Security ("Broadview"). Broadview, therefore, must designate one or more of its officers, directors, managing agents, employees, or other persons who consent to testify on its behalf who are the most qualified to testify on its behalf as to the following matters.

I.

DEFINITIONS

1. "You," "your" and "Broadview" means Brink's Home Security Holdings, Inc. dba Broadview Security, including (a) all of its subsidiaries, divisions, departments, and other operating units, (b) its predecessors-in-interest, and (c) its present and former principals, directors, officers, members, principals, employees, agents, representatives, and attorneys, whether employed or retained on a full-time, part-time, independent contract, commission or other basis.

2. "Person" means any individual, corporation, partnership, limited partnership, limited liability company, association, organization, joint venture, governmental unit or entity, and any other kind of business or other entity, and the directors, officers, partners, members, employees, agents, representatives and attorneys of any such person.

3. "Brink's Network" and "Opposer" mean the entities comprising (a) Opposer Brink's Network, Incorporated, including (i) all of its divisions, departments, and other operating units, (ii) its predecessors in interest, and (iii) its parents, subsidiaries, and affiliates, including but not limited to The Brink's Company, Brink's Guarding Services, Inc., and Brink's, Incorporated (collectively, the "Opposer entities"), and (b) the individuals comprising all of the Opposer entities' present and former (i) directors, (ii) officers, (iii) members, (iv) employees, (v) agents, (vi) representatives, (vii) attorneys, and (viii) others acting or purporting to act on behalf of any of the Opposer entities, whether employed or retained on a full-time, part-time, independent contract, commission, or other basis.

4. "Brinkmann" and "Applicant" means (a) Applicant The Brinkmann Corporation, and (b) the individuals comprising all of its present and former (i) directors, (ii) officers, (iii) employees, (iv) agents, (v) representatives, and (vi) attorneys, whether employed or retained on a full-time, part-time, independent contract, commission, or other basis.

5. "Document" means all items within the scope of FED. R. CIV. P. 34(a) and all forms of writings as defined in FED. R. EVID. 1001(1), and includes any reduction to tangible form, including any written, recorded or filmed matter and any computer, magnetic or optical memory or storage, of any communications, information, or data of any kind or nature, however produced or reproduced, including originals, drafts and copies, wherever located. For documents in the form of computer, magnetic or optical storage, this definition requires production of such documents in machine-readable or usable form (e.g., magnetic or optical disk or tape), as well as printouts of the information or data in the computer files or programs. This definition applies to all documents in your possession, custody, or control, or that of your officers, directors, agents, representatives, employees, and attorneys, whether employed or retained on a full-time, part-time, independent contract, commission, or other basis, irrespective of who generated, prepared, or signed the documents. A document is deemed to be within your control if you have

ownership, possession or custody of the document or a copy, or the right to secure the document or a copy from any person or public or private entity having physical possession of it.

6. “Thing” means any tangible item, including, but not limited to, mock-ups, specimens, models, prototypes, and samples of any device, product, or apparatus, or parts thereof.

7. “Brink’s Mark” means any trademark or service mark that includes the word “Brink’s” or “Brinks” in any manner or form, whether alone or in combination with any other word, name, symbol, or device.

8. “Brink’s Product” and “Brink’s Service” mean, respectively, any product and service advertised, promoted, distributed, offered for sale, sold, or provided by Broadview under any Brink’s Mark.

9. “Brinkmann Mark” means any trademark or service mark that includes the word “Brinkmann” in any manner or form, whether alone or in combination with any other word, name, symbol, or device.

10. “Brinkmann Product” means any product advertised, promoted, distributed, offered for sale, sold, or provided under any Brinkmann Mark.

11. “Pertaining to” means and refers to alluding to, analyzing, comprising, connected with, constituting, containing, concerning, discussing, describing, evidencing, incorporating, identifying, involving, memorializing, referring to, reflecting, regarding, relating to, responding to, showing, or in any other way referring to the subject matter referred to in the request. A request for documents and/or things pertaining to an allegation, or to a denial of an

allegation, in a pleading includes documents and/or things tending to support or to refute such allegation or denial.

12. “Identify” or to give the “identity” of means (a) in the case of a document, to state the type of document (e.g., letter, memorandum, license, etc.), the date it bears or was prepared or sent, the identity of the author, originator or sender, the identity of each person who received the document (whether or not named as an addressee), its subject and substance, the number of pages comprising the document, and the present location and the identity of the custodian of the document, and (b) in the case of a person, to state the name and present or last known street address, city and state of residence, and telephone number.

13. “Communication” means any written, oral, or other transmission of information between a sender and a recipient. Communication comprises any and all such means including speech and writings, as well as any and all means of electronic or optical signals of any kind, specifically including e-mail.

II.

INSTRUCTIONS

1. Third-party witness Brink's Home Security Holdings, Inc. dba Broadview Security's deposition is being taken pursuant to Federal Rules of Civil Procedure 30(b)(6) and 45. Pursuant to Rule 30(b)(6), Applicant Brinkmann may, in a subpoena for a deposition directed at a corporation or partnership or association, "describe with reasonable particularity the matters on which examination is requested." Then, the "organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify The persons so designated shall testify as to matters known or reasonably available to the organization."

2. The deposition will take place before an officer authorized to administer oaths by the laws of the United States or the laws of the place where the examination is to be held and in accordance with the provisions of Federal Rules of Civil Procedure 30, 45(a), and 45(a)(1)(C), and will be stenographically recorded.

III.

MATTERS FOR EXAMINATION

TOPIC FOR TESTIMONY NO. 1:

Broadview's business and its products or services.

TOPIC FOR TESTIMONY NO. 2:

Your business relationship with Peder Kolind, including all proposals, presentations, studies, analyses discussions, negotiations and communications between you and Peder Kolind.

TOPIC FOR TESTIMONY NO. 3:

The origin (circa 1983) and history of Broadview and its business, products and services from its founding to the present, including (i) the origination of the idea to found the business, (ii) all proposals, business plans, studies or investigations related to founding the business, (iii) the date the business commenced offering products or services, (iv) Broadview's relationship to Brink's Network from Broadview's founding to the present, (v) the identification of the products or services offered by the business from its founding to the present, (vi) the Brink's Marks used in connection with the products and services offered by Broadview from its founding to the present, (vii) the geographic scope in the U.S. of Broadview's business from its founding to the present, and (viii) the names of the key individuals responsible for any or all of the foregoing.

TOPIC FOR TESTIMONY NO. 4:

The identification of each Brink's Mark used by Broadview and each Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview (e.g., by name and/or number) in the United States, from introduction to the present.

TOPIC FOR TESTIMONY NO. 5:

The dates that each Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview were first offered for sale and, if applicable, stopped offering for sale, and the reasons therefor.

TOPIC FOR TESTIMONY NO. 6:

The channels of distribution for each Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview (e.g., via bricks and mortar stores, mail-order, catalog, Internet, etc.) in the United States.

TOPIC FOR TESTIMONY NO. 7:

The amount of sales annually in dollars in the United States by Broadview of each different Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview from introduction to the present.

TOPIC FOR TESTIMONY NO. 8:

The content of all advertising and promotion of any Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview in the United States.

TOPIC FOR TESTIMONY NO. 9:

The avenues (e.g., print, television, radio, Internet, etc.) for all advertising and promotion of any Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview in the United States.

TOPIC FOR TESTIMONY NO. 10:

The amount of advertising and promotional expenditures annually in dollars in the United States by Broadview of each different Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview from introduction to the present.

TOPIC FOR TESTIMONY NO. 11:

The purchasers and prospective purchasers for each Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview in the United States, classified by demographics, geography and other criteria as used by Broadview.

TOPIC FOR TESTIMONY NO. 12:

The marketplace competitors for each Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview in the United States.

TOPIC FOR TESTIMONY NO. 13:

The identification of any products or services considered, discussed, studied or analyzed by Broadview to be sold under any Brink's Mark but not ultimately offered for sale by Broadview, including the dates and circumstances of such consideration, discussion, study or analysis.

TOPIC FOR TESTIMONY NO. 14:

Broadview's knowledge of any federal trademark applications or registrations by Brink's Network for any marks incorporating BRINK'S or BRINKS.

TOPIC FOR TESTIMONY NO. 15:

Instances of customer complaints associated with any Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview.

TOPIC FOR TESTIMONY NO. 16:

Broadview's knowledge of Brinkmann, Brinkmann's Products, Brinkmann's Mark and Brinkmann's channels of trade for Brinkmann's Products, including the dates and circumstances of such knowledge and any communications between you and Brink's Network on such topic.

TOPIC FOR TESTIMONY NO. 17:

All investigations, if any, ever conducted by or on behalf of Broadview of Brinkmann, Brinkmann's manufacture, distribution, or marketing of Brinkmann Products, and/or Brinkmann's use of any Brinkmann Marks.

TOPIC FOR TESTIMONY NO. 18:

All instances, if any, of actual confusion between Broadview or any Brink's Products or Brink's Services, on the one hand, and Brinkmann or its Brinkmann's Products on the one other hand, including the identity of the person confused, the date, location, and complete circumstances of the confusion.

TOPIC FOR TESTIMONY NO. 19:

All instances, if any, in which Broadview has ever received any inquiries as to whether any Brinkmann Products manufactured, distributed, or marketed by or on behalf of Brinkmann are associated with, sponsored by, or in any manner connected with the Broadview.

TOPIC FOR TESTIMONY NO. 20:

Broadview's knowledge of any party other than Brink's Network or Brinkmann using a Brink formative mark in the United States.

TOPIC FOR TESTIMONY NO. 21:

Broadview's knowledge of any party other than Brink's Network or Brinkmann that has applied for or registered a Brink formative mark in the United States.

TOPIC FOR TESTIMONY NO. 22:

All efforts by or on behalf of Broadview to police the marketing of any Brink's Product or Brink's Service, or the use or registration of any Brink formative mark, by any persons in the United States.

TOPIC FOR TESTIMONY NO. 23:

Your business relationship with Brink's Network.

TOPIC FOR TESTIMONY NO. 24:

The circumstances leading to, and the terms and conditions of, the spin-off of Broadview from The Brink's Company.

TOPIC FOR TESTIMONY NO. 25:

The circumstances leading to, and the terms and conditions of, the non-compete agreement and the non-compete period between Brink's Network and Broadview with respect to any Brink's Mark.

TOPIC FOR TESTIMONY NO. 26:

The circumstances leading to, and the terms and conditions of, any assignment or licensing of any Brink's Marks from Brink's Network to Broadview.

TOPIC FOR TESTIMONY NO. 27:

All presentations, studies, analyses or investigations pertaining to Brink's Network, or any potential, proposed or actual license with Brink's Network for any Brink's Mark or Brink's Product or Brink's Service.

TOPIC FOR TESTIMONY NO. 28:

All negotiations or discussions with Brink's Network pertaining to any potential, proposed or actual license for any Brink's Mark or Brink's Product or Brink's Service.

TOPIC FOR TESTIMONY NO. 29:

All communications between you and Brink's Network pertaining to any potential, proposed or actual license with Brink's Network for any Brink's Mark or Brink's Product or Brink's Service.

TOPIC FOR TESTIMONY NO. 30:

All licenses with Brink's Network for any Brink's Mark or Brink's Product or Brink's Service.

TOPIC FOR TESTIMONY NO. 31:

All quality control standards or requirements for any Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview, including any communications between you and Brink's Network on such topic.

TOPIC FOR TESTIMONY NO. 32:

All activities of Brink's Network related to enforcing quality control standards or requirements for any Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview, including any communications between you and Brink's Network on such topic.

TOPIC FOR TESTIMONY NO. 33:

All trademark usage guidelines by Brink's Network for any Brink's Mark, including any communications between you and Brink's Network on such topic.

TOPIC FOR TESTIMONY NO. 34:

All activities of Brink's Network related to enforcing trademark usage guidelines for any Brink's Mark used by Broadview, including any communications between you and Brink's Network on such topic.

TOPIC FOR TESTIMONY NO. 35:

The amount of royalty payments annually in dollars in the United States by Broadview to Brink's Network of each different Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview from the spin-off from The Brink's Company to the present.

TOPIC FOR TESTIMONY NO. 36:

Any changes, additions or discontinuances of any Brink's Products or Brink's Services by Broadview after the spin-off from The Brink's Company, including the dates and circumstances of such changes, additions or discontinuances.

TOPIC FOR TESTIMONY NO. 37:

The transition and/or phase-out of any Brink's Mark by Broadview, including the dates that each Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview were stopped offering for sale under the Brink's Mark.

TOPIC FOR TESTIMONY NO. 38:

Broadview's current use of any Brink's Mark.

TOPIC FOR TESTIMONY NO. 39:

The transition and/or phase-out (whether past, current or impending) by Broadview of any other use of Brink's, including use as a trademark, service mark, corporate name, in advertising, as meta-tags or in domain name URLs.

TOPIC FOR TESTIMONY NO. 40:

Brink's Network's intended resumption of use, if any, of the Brink's Marks after the termination or expiration of any covenants or agreements not to compete with respect to any Brink's Marks by Brink's Network vis-à-vis Broadview.

TOPIC FOR TESTIMONY NO. 41:

Any trademark licenses between Brink's Network and Hampton Products International Corporation.

TOPIC FOR TESTIMONY NO. 42:

The business relationship between Brink's Network and Hampton Products International Corporation.

TOPIC FOR TESTIMONY NO. 43:

Broadview's business relationship, if any, with Hampton Products International Corporation.

TOPIC FOR TESTIMONY NO. 44:

The effect that the name change to Broadview Security has on the trademark license(s) between Brink's Network and Hampton Products International Corporation, including any objections made by Hampton of the name change.

TOPIC FOR TESTIMONY NO. 45:

The circumstances leading to, and the terms and conditions of, the acquisition of Broadview by Tyco International Ltd.

TOPIC FOR TESTIMONY NO. 46:

The effect that the acquisition of Broadview by Tyco International Ltd. has on the use of any Brink's Mark or Brink's Product or Brink's Service.

TOPIC FOR TESTIMONY NO. 47:

The effect that the acquisition of Broadview by Tyco International Ltd. has on any trademark license(s) between Brink's Network and Broadview.

TOPIC FOR TESTIMONY NO. 48:

The effect that the acquisition of Broadview by Tyco International Ltd. has on the trademark license(s) between Brink's Network and Hampton Products International Corporation, including any objections made by Hampton of the acquisition.

UNITED STATES DISTRICT COURT
for the
Northern District of Texas

BRINK'S NETWORK, INCORPORATED

Plaintiff

v.

THE BRINKMANN CORPORATION

Defendant

Civil Action No. 91164764

(If the action is pending in another district, state where:
USPTO TTAB)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: BRINK'S HOME SECURITY HOLDINGS, INC. DBA BROADVIEW SECURITY
8880 Esters Blvd, Irving, TX 75063

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: SEE ATTACHED SCHEDULE OF DOCUMENTS AND THINGS

Place:

Figari & Davenport, L.L.P.
3400 Bank of America Plaza
901 Main Street
Dallas, Texas 75202

Date and Time:

May 13, 2010; 9:00 a.m.

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: April 27, 2010

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Michael G. Brown

The Brinkmann Corporation, who issues or requests this subpoena, are:

Michael G. Brown, Esq.

Figari & Davenport, L.L.P.

3400 Bank of America Plaza, 901 Main Street, Dallas, Texas 75202; Tel.: (214) 939-2000; mike.brown@figdav.com



Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of

\$ _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) *Contempt.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).



**SCHEDULE OF DOCUMENTS AND THINGS
TO SUBPOENA TO
BRINK'S HOME SECURITY HOLDINGS, INC. DBA BROADVIEW SECURITY
8880 ESTERS BLVD
IRVING, TX 75063
TEL. (972) 871-3500**

This Schedule of Documents and Things identifies the documents and tangible things requested by The Brinkmann Corporation, under Rule 45(a)(1)(C) and (d) of the Federal Rules of Civil Procedure and Rule 2.120(a) of the Trademark Rules of Practice, to be produced by Brink's Home Security Holdings, Inc. dba Broadview Security for inspection and copying pursuant to the attached subpoena.

I.

DEFINITIONS

1. "You," "your" and "Broadview" means Brink's Home Security Holdings, Inc. dba Broadview Security, including (a) all of its subsidiaries, divisions, departments, and other operating units, (b) its predecessors-in-interest, and (c) its present and former principals, directors, officers, members, principals, employees, agents, representatives, and attorneys, whether employed or retained on a full-time, part-time, independent contract, commission or other basis.

2. "Person" means any individual, corporation, partnership, limited partnership, limited liability company, association, organization, joint venture, governmental unit or entity, and any other kind of business or other entity, and the directors, officers, partners, members, employees, agents, representatives and attorneys of any such person.

3. "Brink's Network" and "Opposer" mean (a) the entities comprising Opposer Brink's Network, Incorporated, including (i) all of its divisions, departments, and other operating units, (ii) its predecessors in interest, and (iii) its parents, subsidiaries, and affiliates, including but not limited to The Brink's Company, Brink's Guarding Services, Inc. and Brink's, Incorporated (collectively, the "Opposer entities"), and (b) the individuals comprising all of the Opposer entities' present and former (i) directors, (ii) officers, (iii) members, (iv) employees, (v) agents, (vi) representatives, (vii) attorneys, and (viii) others acting or purporting to act on behalf of any of the Opposer entities, whether employed or retained on a full-time, part-time, independent contract, commission, or other basis.

4. "Brinkmann" and "Applicant" means (a) The Brinkmann Corporation, and (b) the individuals comprising all of its present and former (i) directors, (ii) officers, (iii) employees, (iv) agents, (v) representatives, and (vi) attorneys, whether employed or retained on a full-time, part-time, independent contract, commission, or other basis.

5. "Document" means all items within the scope of FED. R. CIV. P. 34(a) and all forms of writings as defined in FED. R. EVID. 1001(1), and includes any reduction to tangible form, including any written, recorded or filmed matter and any computer, magnetic or optical memory or storage, of any communications, information, or data of any kind or nature, however produced or reproduced, including originals, drafts and copies, wherever located. For documents in the form of computer, magnetic or optical storage, this definition requires production of such documents in machine-readable or usable form (e.g., magnetic or optical disk or tape), as well as printouts of the information or data in the computer files or programs. This definition applies to all documents in your possession, custody, or control, or that of your officers, directors, agents, representatives, employees, and attorneys, whether employed or retained on a full-time, part-time, independent contract, commission, or other basis, irrespective of who generated, prepared, or signed the documents. A document is deemed to be within your control if you have

ownership, possession or custody of the document or a copy, or the right to secure the document or a copy from any person or public or private entity having physical possession of it.

6. “Thing” means any tangible item, including, but not limited to, mock-ups, specimens, models, prototypes, and samples of any device, product, or apparatus, or parts thereof.

7. “Brink’s Mark” means any trademark or service mark that includes the words “Brink’s” or “Brinks” in any manner or form, whether alone or in combination with any other word, name, symbol, or device.

8. “Brink’s Product” and “Brink’s Service” mean, respectively, any product and service advertised, promoted, distributed, offered for sale, sold, or provided by Broadview under any Brink’s Mark.

9. “Brinkmann Mark” means any trademark or service mark that includes the word “Brinkmann” in any manner or form, whether alone or in combination with any other word, name, symbol, or device.

10. “Brinkmann Product” means any product advertised, promoted, distributed, offered for sale, sold, or provided under any Brinkmann Mark.

11. “Pertaining to” means and refers to alluding to, analyzing, comprising, connected with, constituting, containing, concerning, discussing, describing, evidencing, incorporating, identifying, involving, memorializing, referring to, reflecting, regarding, relating to, responding to, showing, or in any other way referring to the subject matter referred to in the request. A request for documents and/or things pertaining to an allegation, or to a denial of an

allegation, in a pleading includes documents and/or things tending to support or to refute such allegation or denial.

12. “Identify” or to give the “identity” of means (a) in the case of a document, to state the type of document (e.g., letter, memorandum, license, etc.), the date it bears or was prepared or sent, the identity of the author, originator or sender, the identity of each person who received the document (whether or not named as an addressee), its subject and substance, the number of pages comprising the document, and the present location and the identity of the custodian of the document, and (b) in the case of a person, to state the name and present or last known street address, city and state of residence, and telephone number.

13. “Communication” means any written, oral, or other transmission of information between a sender and a recipient. Communication comprises any and all such means including speech and writings, as well as any and all means of electronic or optical signals of any kind, specifically including e-mail.

II.

INSTRUCTIONS

1. Rule 45(d)(1) of the Federal Rules of Civil Procedure provides that “[a] person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.” If you elect to produce documents as they are kept in the usual course of business, they should be produced in the boxes, file folders, bindings, or other containers in which the documents are found. The title, labels, or other descriptions of the boxes, file folders, binders, or other containers should be left intact.

2. Whenever appropriate, the singular form of a word shall be interpreted in the plural and vice versa; verb tenses shall be interpreted to include past, present, and future tenses; the terms “and” as well as “or” shall be construed either conjunctively or disjunctively, as necessary to bring within the scope of this subpoena any documents that might otherwise be considered outside their purview; and words imparting the masculine include the feminine and vice versa.

3. In producing the requested documents and things, you are required to furnish all documents and things available to you, including, by way of illustration only, and not by way of limitation, documents and things in the possession of your attorneys, or in the possession of your or their consultants, investigators, advisors, agents, or associates.

4. Rule 45(d)(2) of the Federal Rules of Civil Procedure provides that “[w]hen information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be expressly made and shall be

supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.” If any documents requested herein are withheld by you based upon a claim of privilege or work product, state as to each such document:

- (1) The basis for withholding the document;
- (2) The nature of the document withheld (e.g., letter);
- (3) The date of the document;
- (4) The identity of the author;
- (5) The identity of each recipient of the document or any copy hereof;
- (6) The length of the document in pages;
- (7) The location of the original and each copy of the document; and
- (8) The general subject matter of the document.

III.

DOCUMENTS AND THINGS REQUESTED

1. All documents and things pertaining to your business relationship with Peder Kolind, including all proposals, presentations, studies, analyses discussions, negotiations and communications between you and Peder Kolind.
2. All documents and things pertaining to the origination of the idea to found Broadview (circa 1983), including all proposals, business plans, studies or investigations related to founding the business, and all communications between any individuals or entities pertaining to the foregoing.
3. Documents and things sufficient to identify (i) the date (circa 1983) Broadview commenced offering products or services, (ii) Broadview's relationship to Brink's Network from the founding of Broadview to the present, (iii) the products and services offered by Broadview from its founding to the present, (iv) the Brink's Marks used in connection with the products or services offered by Broadview from its founding to the present, (v) the geographic scope in the U.S. of Broadview's business from its founding to the present, and (vi) the names of the key individuals responsible for any or all of the foregoing.
4. Documents and things sufficient to identify each Brink's Mark used by Broadview and each Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview (e.g., by product name and SKU) in the United States, from introduction to the present.

5. A sample of any Brink's Product manufactured, advertised, offered for sale or sold by Broadview.

6. A sample of any packaging for each Brink's Product manufactured, advertised, offered for sale or sold by Broadview.

7. Documents and things sufficient to identify the channels of distribution for each Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview (e.g., via bricks and mortar stores, mail-order, catalog, Internet, etc.) in the United States.

8. Documents and things sufficient to identify the amount of sales annually in dollars in the United States by Broadview of each different Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview from introduction to the present.

9. A sample of each different advertisement or promotional material ever used by Broadview for each different Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview in the United States from introduction to the present.

10. Documents and things sufficient to identify the avenues (e.g., print, television, radio, Internet, etc.) for all advertising and promotion of any Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview in the United States.

11. Documents and things sufficient to identify the amount of advertising and promotional expenditures annually in dollars in the United States by Broadview of each different Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview from introduction to the present.

12. Documents and things sufficient to identify the purchasers and prospective purchasers for each Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview in the United States.

13. Documents and things sufficient to identify the marketplace competitors for each Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview in the United States.

14. All documents and things pertaining to any products or services considered, discussed, studied or analyzed by Broadview to be sold under any Brink's Mark but not ultimately offered for sale by Broadview, including the dates and circumstances of such consideration, discussion, study or analysis.

15. All documents and things pertaining to any federal trademark applications or registrations by Brink's Network for any marks incorporating BRINK'S or BRINKS.

16. Documents and things sufficient to identify the types of customer complaints associated with any Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview.

17. All documents and things pertaining to Broadview's knowledge of Brinkmann, Brinkmann's Products, Brinkmann's Mark and Brinkmann's channels of trade for Brinkmann's Products, including the dates and circumstances of such knowledge and any communications between you and Brink's Network on such topic.

18. All documents and things pertaining to any investigations, if any, ever conducted by or on behalf of Broadview of Brinkmann, Brinkmann's manufacture, distribution, or marketing of Brinkmann Products, and/or Brinkmann's use of any Brinkmann Marks.

19. All documents and things pertaining to any instances, if any, of actual confusion between Broadview or any Brink's Products or Brink's Services, on the one hand, and Brinkmann or its Brinkmann's Products on the one other hand, including the identity of the person confused, the date, location, and complete circumstances of the confusion.

20. All documents and things pertaining to any instances, if any, in which Broadview has ever received any inquiries as to whether any Brinkmann Products manufactured, distributed, or marketed by or on behalf of Brinkmann are associated with, sponsored by, or in any manner connected with the Broadview.

21. All documents and things pertaining to Broadview's knowledge of any party other than Brink's Network or Brinkmann using a Brink formative mark in the United States.

22. All documents and things pertaining to Broadview's knowledge of any party other than Brink's Network or Brinkmann that has applied for or registered a Brink formative mark in the United States.

23. All documents and things pertaining to any efforts by or on behalf of Broadview to police the marketing of any Brink's Product or Brink's Service, or the use or registration of any Brink formative mark, by any persons in the United States.

24. All documents and things pertaining to your business relationship with Brink's Network.

25. All documents and things pertaining to the circumstances leading to, and the terms and conditions of, the spin-off of Broadview from The Brink's Company.

26. All documents and things pertaining to the circumstances leading to, and the terms and conditions of, the non-compete agreement and the non-compete period between Brink's Network and Broadview with respect to any Brink's Mark.

27. All documents and things pertaining to the circumstances leading to, and the terms and conditions of, any assignment or licensing of any Brink's Marks from Brink's Network to Broadview.

28. All presentations, studies, analyses or investigations pertaining to Brink's Network, or any potential, proposed or actual license with Brink's Network for any Brink's Mark or Brink's Product or Brink's Service.

29. All documents and things pertaining to any negotiations or discussions with Brink's Network pertaining to any potential, proposed or actual license for any Brink's Mark or Brink's Product or Brink's Service.

30. All documents and things pertaining to any communications between you and Brink's Network pertaining to any potential, proposed or actual license with Brink's Network for any Brink's Mark or Brink's Product or Brink's Service

31. All licenses with Brink's Network for any Brink's Mark or Brink's Product or Brink's Service.

32. All documents and things pertaining to any quality control standards or requirements for any Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview, including any communications between you and Brink's Network on such topic.

33. All documents and things pertaining to any activities of Brink's Network related to enforcing quality control standards or requirements for any Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview, including any communications between you and Brink's Network on such topic.

34. All trademark usage guidelines by Brink's Network for any Brink's Mark, including any communications between you and Brink's Network on such topic.

35. All documents and things pertaining to any activities of Brink's Network related to enforcing trademark usage guidelines for any Brink's Mark used by Broadview, including any communications between you and Brink's Network on such topic.

36. Documents and things sufficient to identify the amount of royalty payments annually in dollars in the United States by Broadview of each different Brink's Product or Brink's Service advertised, offered for sale or sold by Broadview from the spin-off from The Brink's Company to the present.

37. All documents and things pertaining to any changes, additions or discontinuances of any Brink's Products or Brink's Services by Broadview after the spin-off from The Brink's Company, including the dates and circumstances of such changes, additions or discontinuances.

38. All documents and things pertaining to the transition and/or phase-out of any Brink's Mark by Broadview, including the dates that each Brink's Product or Brink's Service

advertised, offered for sale or sold by Broadview were stopped offering for sale under the Brink's Mark.

39. Documents and things sufficient to identify Broadview's current use of any Brink's Mark.

40. All documents and things pertaining to the transition and/or phase-out (whether past, current or impending) by Broadview of any other use of Brink's, including use as a corporate name, in advertising, as meta-tags or in domain name URLs.

41. All documents and things pertaining to Brink's Network's intended resumption of use, if any, of the Brink's Marks after the termination or expiration of any covenants or agreements not to compete with respect to any Brink's Marks by Brink's Network vis-à-vis Broadview.

42. All documents and things pertaining to Broadview, any Brink's Mark or Brink's Products not otherwise requested herein.

43. All documents pertaining to any communications between you and any persons referring to Brinkmann, any Brinkmann Mark or Brinkmann Product from 1983 to the present.

44. All documents pertaining to any communications between you and any persons referring to any other parties using any Brink formative mark.

45. All documents and things pertaining to any trademark licenses between Brink's Network and Hampton Products International Corporation, including any communications between you and any persons on such topic.

46. All documents and things pertaining to the business relationship between Brink's Network and Hampton Products International Corporation, including any communications between you and any persons on such topic.

47. All documents and things pertaining to Broadview's business relationship, if any, with Hampton Products International Corporation, including any communications between you and any persons on such topic.

48. All documents and things pertaining to the effect that the name change to Broadview Security has on the trademark license(s) between Brink's Network and Hampton Products International Corporation (such as any objections made by Hampton of the name change), including any communications between you and any persons on such topic.

49. All documents and things pertaining to the circumstances leading to, and the terms and conditions of, the acquisition of Broadview by Tyco International Ltd.

50. All documents and things pertaining to the effect that the acquisition of Broadview by Tyco International Ltd. has on the use of any Brink's Mark or Brink's Product or Brink's Service.

51. All documents and things pertaining to the effect that the acquisition of Broadview by Tyco International Ltd. has on any trademark license(s) between Brink's Network and Broadview.

52. All documents and things pertaining to the effect that the acquisition of Broadview by Tyco International Ltd. has on the trademark license(s) between Brink's Network

and Hampton Products International Corporation, including any objections made by Hampton of the acquisition.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BRINK'S NETWORK, INCORPORATED,

Opposer,

v.

THE BRINKMANN CORPORATION,

Applicant.

Opposition No. 91164764

**APPLICANT'S NOTICE OF SUBPOENAS FOR PRODUCTION OF DOCUMENTS
AND DEPOSITION OF HAMPTON PRODUCTS INTERNATIONAL CORPORATION**

TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:

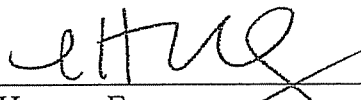
PLEASE TAKE NOTICE that, pursuant to RULE 45 of the FEDERAL RULES OF CIVIL PROCEDURE, Applicant The Brinkmann Corporation is serving subpoenas on Hampton Products International Corporation, copies of which are attached hereto.

PLEASE TAKE FURTHER NOTICE that, pursuant to RULE 45 of the FEDERAL RULES OF CIVIL PROCEDURE, Hampton Products International Corporation is requested to produce the documents and things in its custody, possession, or control specified in the Schedule of Documents and Things to the attached document subpoena on Tuesday, August 25, 2009 at 9:00 a.m., at the offices of Sheppard, Mullin, Richter & Hampton LLP, 650 Town Center Drive, 4th Floor, Costa Mesa, California 92626.

PLEASE TAKE FURTHER NOTICE that, pursuant to RULES 30(b)(6) and 45 of the FEDERAL RULES OF CIVIL PROCEDURE, Applicant The Brinkmann Corporation will conduct a deposition upon oral examination of Hampton Products International Corporation commencing at 9:00 a.m. on Tuesday, September 1, 2009, or such other date and time as the parties may agree, at the law offices of Sheppard, Mullin, Richter & Hampton LLP, 650 Town Center Drive, 4th Floor, Costa Mesa, California 92626. The deponent is not a natural person and is a party to this action. Pursuant to RULE 30(b)(6) of the FEDERAL RULES OF CIVIL PROCEDURE, Hampton Products International Corporation shall designate on or more officers, directors, or managing agents, employees or other persons who consent to testify on its behalf, regarding the subjects described in the Schedule of Testimony Topics to the attached deposition subpoena.

The deposition will be taken before a notary public or other person authorized to administer oaths.

Dated: August 10, 2009



Susan Hwang, Esq.
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 48th Floor
Los Angeles, California 90071
Tel.: (213) 620-1780
Fax: (213) 620-1398

Attorneys for Applicant
THE BRINKMANN CORPORATION

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing "Applicant's Notice Of Deposition Of Hampton Products International Corporation and Notice of Subpoena" by placing a copy in the United States Mail, postage pre-paid, addressed as follows: Nancy S. Lapidus, counsel for Opposer, at Howrey LLP, 1299 Pennsylvania Avenue, N.W., Washington, DC 20004.

Dated: August 10, 2009



SUSAN HWANG

UNITED STATES DISTRICT COURT
for the
Central District of California

BRINK'S NETWORK, INCORPORATED

Plaintiff

v.

THE BRINKMANN CORPORATION

Defendant

Civil Action No. 91164764

(If the action is pending in another district, state where:

USPTO TTAB

**SUBPOENA TO TESTIFY AT A DEPOSITION
OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION**

To:

HAMPTON PRODUCTS INTERNATIONAL CORPORATION
50 ICON, FOOTHILL RANCH, CALIFORNIA 92610

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

SEE ATTACHED SCHEDULE OF TESTIMONY TOPICS

Place:

Sheppard, Mullin, Richter & Hampton LLP
650 Town Center Drive, 4th Floor
Costa Mesa, California 92626

Date and Time:

September 1, 2009, 9:00 a.m.

The deposition will be recorded by this method: Stenographic

☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

SEE ATTACHED SCHEDULE OF TESTIMONY

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: August 10, 2009

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR

Attorney's signature
Gary A. Clark

The name, address, e-mail, and telephone number of the attorney representing (name of party) The Brinkmann Corporation, who issues or requests this subpoena, are:

Gary A. Clark, Esq.

Sheppard, Mullin, Richter & Hampton LLP

333 So. Hope St., 43rd Fl, Los Angeles, California 90071; Tel: (213) 617-4197; gclark@sheppardmullin.com

Civil Action No. 91164764

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____

☐ I personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the subpoena on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because _____; or

☐ Other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**SCHEDULE OF TESTIMONY TOPICS
TO SUBPOENA TO
HAMPTON PRODUCTS INTERNATIONAL CORPORATION
50 ICON
FOOTHILL RANCH, CA 92610
TEL. (949) 472-4256
FAX (949) 472-9657**

This Schedule of Testimony Topics sets forth the matters below on which Applicant Brinkmann seeks examination from Hampton. Hampton, therefore, must designate one or more of its officers, directors, managing agents, employees, or other persons who consent to testify on its behalf who are the most qualified to testify on its behalf as to the following matters.

I.

DEFINITIONS

1. “You,” “your” and “Hampton” each mean Hampton Products International Corporation, all of its divisions, departments, and other operating units (including but not limited to Hampton Automotive Group), and include its present and principals, directors, officers, members, principals, employees, agents, representatives, and attorneys, whether employed or retained on a full-time, part-time, independent contract, commission or other basis.

2. “Person” means any individual, corporation, partnership, limited partnership, limited liability company, association, organization, joint venture, governmental unit or entity, and any other kind of business or other entity, and the directors, officers, partners, members, employees, agents, representatives and attorneys of any such person.

3. “Brink’s Network” and “Opposer” mean (a) the entities comprising (a) Opposer Brink’s Network, Incorporated, including (i) all of its divisions, departments, and

other operating units, (ii) its predecessors in interest, and (iii) its parents, subsidiaries, and affiliates, including but not limited to The Brink's Company, Brink's Guarding Services, Inc., Brink's Home Security, Inc. and Brink's, Incorporated (collectively, the "Opposer entities"), and (b) the individuals comprising all of the Opposer entities' present and former (i) directors, (ii) officers, (iii) members, (iv) employees, (v) agents, (vi) representatives, (vii) attorneys, and (viii) others acting or purporting to act on behalf of any of the Opposer entities, whether employed or retained on a full-time, part-time, independent contract, commission, or other basis.

4. "Brinkmann" and "Applicant" means (a) Applicant The Brinkmann Corporation, and (b) the individuals comprising all of its present and former (i) directors, (ii) officers, (iii) employees, (iv) agents, (v) representatives, and (vi) attorneys, whether employed or retained on a full-time, part-time, independent contract, commission, or other basis.

5. "Document" means all items within the scope of FED. R. CIV. P. 34(a) and all forms of writings as defined in FED. R. EVID. 1001(1), and includes any reduction to tangible form, including any written, recorded or filmed matter and any computer, magnetic or optical memory or storage, of any communications, information, or data of any kind or nature, however produced or reproduced, including originals, drafts and copies, wherever located. For documents in the form of computer, magnetic or optical storage, this definition requires production of such documents in machine-readable or usable form (e.g., magnetic or optical disk or tape), as well as printouts of the information or data in the computer files or programs. This definition applies to all documents in your possession, custody, or control, or that of your officers, directors, agents, representatives, employees, and attorneys, whether employed or retained on a full-time, part-time, independent contract, commission, or other basis, irrespective of who generated, prepared, or signed the documents. A document is deemed to be within your control if you have ownership, possession or custody of the document or a copy, or the right to secure the document or a copy from any person or public or private entity having physical possession of it.

6. “Thing” means any tangible item, including, but not limited to, mock-ups, specimens, models, prototypes, and samples of any device, product, or apparatus, or parts thereof.

7. “Brink’s Mark” means any trademark or service mark that includes the word “Brink’s” or “Brinks” in any manner or form, whether alone or in combination with any other word, name, symbol, or device.

8. “Brink’s Product” and “Brink’s Service” mean, respectively, any product and service advertised, promoted, distributed, offered for sale, sold, or provided under any Brink’s Mark by Hampton.

9. “Brinkmann Mark” means any trademark or service mark that includes the word “Brinkmann” in any manner or form, whether alone or in combination with any other word, name, symbol, or device.

10. “Brinkmann Product” means any product advertised, promoted, distributed, offered for sale, sold, or provided under any Brinkmann Mark.

11. “Pertaining to” means and refers to alluding to, analyzing, comprising, connected with, constituting, containing, concerning, discussing, describing, evidencing, incorporating, identifying, involving, memorializing, referring to, reflecting, regarding, relating to, responding to, showing, or in any other way referring to the subject matter referred to in the request. A request for documents and/or things pertaining to an allegation, or to a denial of an allegation, in a pleading includes documents and/or things tending to support or to refute such allegation or denial.

12. "Identify" or to give the "identity" of means (a) in the case of a document, to state the type of document (e.g., letter, memorandum, license, etc.), the date it bears or was prepared or sent, the identity of the author, originator or sender, the identity of each person who received the document (whether or not named as an addressee), its subject and substance, the number of pages comprising the document, and the present location and the identity of the custodian of the document, and (b) in the case of a person, to state the name and present or last known street address, city and state of residence, and telephone number.

13. "Communication" means any written, oral, or other transmission of information between a sender and a recipient. Communication comprises any and all such means including speech and writings, as well as any and all means of electronic or optical signals of any kind, specifically including e-mail.

II.

INSTRUCTIONS

1. Third-party witness Hampton Products International Corporation's deposition is being taken pursuant to Federal Rules of Civil Procedure 30(b)(6) and 45. Pursuant to Rule 30(b)(6), Applicant Brinkmann may, in a subpoena for a deposition directed at a corporation or partnership or association, "describe with reasonable particularity the matters on which examination is requested." Then, the "organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify The persons so designated shall testify as to matters known or reasonably available to the organization."

2. The deposition will take place before an officer authorized to administer oaths by the laws of the United States or the laws of the place where the examination is to be held and in accordance with the provisions of Federal Rules of Civil Procedure 30, 45(a), and 45(a)(1)(C), and will be stenographically recorded.

III.

MATTERS FOR EXAMINATION

TOPIC FOR TESTIMONY NO. 1:

Hampton's business and its products or services.

TOPIC FOR TESTIMONY NO. 2:

Your business relationship with Brink's Network.

TOPIC FOR TESTIMONY NO. 3:

All communications between you and Brink's Network pertaining to any potential, proposed or actual license with Brink's Network for any Brink's Mark or Brink's Product

TOPIC FOR TESTIMONY NO. 4:

All presentations, studies, analyses or investigations pertaining to Brink's Network, or any potential, proposed or actual license with Brink's Network for any Brink's Mark or Brink's Product.

TOPIC FOR TESTIMONY NO. 5:

All negotiations or discussions with Brink's Network pertaining to any potential, proposed or actual license for any Brink's Mark or Brink's Product.

TOPIC FOR TESTIMONY NO. 6:

All negotiations or discussions with Brink's Network pertaining to any amendments for any license for any Brink's Mark or Brink's Product.

TOPIC FOR TESTIMONY NO. 7:

All licenses with Brink's Network for any Brink's Mark or Brink's Product.

TOPIC FOR TESTIMONY NO. 8:

All amendments to any licenses with Brink's Network for any Brink's Mark or Brink's Product.

TOPIC FOR TESTIMONY NO. 9:

The identification of each Brink's Mark used by Hampton and each Brink's Product manufactured, advertised, offered for sale or sold by Hampton (e.g., by product name and SKU) in the United States, from introduction to the present.

TOPIC FOR TESTIMONY NO. 10:

The dates that each Brink's Product manufactured, advertised, offered for sale or sold by Hampton were first offered for sale and, if applicable, stopped offering for sale.

TOPIC FOR TESTIMONY NO. 11:

The channels of distribution for each Brink's Product manufactured, advertised, offered for sale or sold by Hampton (e.g., via bricks and mortar stores, mail-order, catalog, Internet, etc.) in the United States.

TOPIC FOR TESTIMONY NO. 12:

The amount of sales annually in dollars in the United States by Hampton of each different Brink's Product manufactured, advertised, offered for sale or sold by Hampton from introduction to the present.

TOPIC FOR TESTIMONY NO. 13:

The content of all advertising and promotion of any Brink's Product manufactured, advertised, offered for sale or sold by Hampton in the United States.

TOPIC FOR TESTIMONY NO. 14:

The avenues (e.g., print, television, radio, Internet, etc.) for all advertising and promotion of any Brink's Product manufactured, advertised, offered for sale or sold by Hampton in the United States.

TOPIC FOR TESTIMONY NO. 15:

The amount of advertising and promotional expenditures annually in dollars in the United States by Hampton of each different Brink's Product manufactured, advertised, offered for sale or sold by Hampton from introduction to the present.

TOPIC FOR TESTIMONY NO. 16:

The amount of royalty payments annually in dollars in the United States by Hampton of each different Brink's Product manufactured, advertised, offered for sale or sold by Hampton from introduction to the present.

TOPIC FOR TESTIMONY NO. 17:

The purchasers and prospective purchasers for each Brink's Product manufactured, advertised, offered for sale or sold by Hampton in the United States

TOPIC FOR TESTIMONY NO. 18:

The marketplace competitors for each Brink's Product manufactured, advertised, offered for sale or sold by Hampton in the United States

TOPIC FOR TESTIMONY NO. 19:

The retailers for each type of Brink's Product manufactured, advertised, offered for sale or sold by Hampton (e.g., security light, lock, doorknob, coupler, etc.) in the United States

TOPIC FOR TESTIMONY NO. 20:

All quality control standards or requirements for any Brink's Product manufactured, advertised, offered for sale or sold by Hampton, including any communications between you and Brink's Network on such topic.

TOPIC FOR TESTIMONY NO. 21:

All activities of Brink's Network related to enforcing quality control standards or requirements for any Brink's Product manufactured, advertised, offered for sale or sold by Hampton, including any communications between you and Brink's Network on such topic.

TOPIC FOR TESTIMONY NO. 22:

All trademark usage guidelines by Brink's Network for any Brink's Mark (including use of the federal registration symbol), including any communications between you and Brink's Network on such topic.

TOPIC FOR TESTIMONY NO. 23:

All activities of Brink's Network related to enforcing trademark usage guidelines for any Brink's Mark used by Hampton (including use of the federal registration symbol), including any communications between you and Brink's Network on such topic.

TOPIC FOR TESTIMONY NO. 24:

Hampton's knowledge of any federal trademark applications or registrations by Brink's Network for any marks incorporating BRINK'S or BRINKS.

TOPIC FOR TESTIMONY NO. 25:

Instances of customer complaints associated with any Brink's Product manufactured, advertised, offered for sale or sold by Hampton, including any communications between you and Brink's Network on such topic.

TOPIC FOR TESTIMONY NO. 26:

Hampton's knowledge of Brinkmann, Brinkmann's Products or Brinkmann's Mark, including any communications between you and Brink's Network on such topic.

TOPIC FOR TESTIMONY NO. 27:

Hampton's knowledge of any party other than Brink's Network or Brinkmann using a Brink formative mark, including any communications between you and Brink's Network on such topic.

TOPIC FOR TESTIMONY NO. 28:

The spin-off by The Brink's Company of Brinks Home Security Holdings, Inc., including any communications between you and Brink's Network on such topic.

TOPIC FOR TESTIMONY NO. 29:

The identification of the individuals at Hampton and at Brink's Network most knowledgeable about any presentations, discussions, negotiations, licenses or amendments to any licenses between the parties, including the first and last name, title and involvement of such individuals.

UNITED STATES DISTRICT COURT
for the
Central District of California

BRINK'S NETWORK, INCORPORATED

Plaintiff

v.

THE BRINKMANN CORPORATION

Defendant

Civil Action No. 91164764

(If the action is pending in another district, state where:

USPTO TTAB

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES**

To:

HAMPTON PRODUCTS INTERNATIONAL CORPORATION
50 ICON, FOOTHILL RANCH, CALIFORNIA 92610

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

SEE ATTACHED SCHEDULE OF DOCUMENTS AND THINGS

Place:

Sheppard, Mullin, Richter & Hampton LLP
650 Town Center Drive, 4th Floor
Costa Mesa, California 92626

Date and Time:

August 25, 2009; 9:00 a.m.

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: August 10, 2009

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

Gary A. Clark

The name, address, e-mail, and telephone number of the attorney representing (name of party) The Brinkmann Corporation, who issues or requests this subpoena, are:

Gary A. Clark, Esq.
Sheppard, Mullin, Richter & Hampton LLP
333 So. Hope St., 43rd Fl., Los Angeles, California 90071; Tel: 213 617-4197; gclark@sheppardmullin.com

Civil Action No. 91164764

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____

☐ I personally served the subpoena on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the subpoena to *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because _____; or

☐ other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**SCHEDULE OF DOCUMENTS AND THINGS
TO SUBPOENA TO
HAMPTON PRODUCTS INTERNATIONAL CORPORATION
50 ICON
FOOTHILL RANCH, CA 92610
TEL. (949) 472-4256
FAX (949) 472-9657**

This Schedule of Documents and Things identifies the documents and tangible things requested by The Brinkmann Corporation, under Rule 45(a)(1)(C) and (d) of the Federal Rules of Civil Procedure and Rule 2.120(a) of the Trademark Rules of Practice, to be produced by Hampton Products International Corporation for inspection and copying pursuant to the attached subpoena.

I.

DEFINITIONS

1. "You," "your" and "Hampton" each mean Hampton Products International Corporation, all of its divisions, departments, and other operating units (including but not limited to Hampton Automotive Group) and include its present and principals, directors, officers, members, principals, employees, agents, representatives, and attorneys, whether employed or retained on a full-time, part-time, independent contract, commission or other basis.

2. "Person" means any individual, corporation, partnership, limited partnership, limited liability company, association, organization, joint venture, governmental unit or entity, and any other kind of business or other entity, and the directors, officers, partners, members, employees, agents, representatives and attorneys of any such person.

3. “Brink’s Network” and “Opposer” mean (a) the entities comprising Opposer Brink’s Network, Incorporated, including (i) all of its divisions, departments, and other operating units, (ii) its predecessors in interest, and (iii) its parents, subsidiaries, and affiliates, including but not limited to The Brink’s Company, Brink’s Guarding Services, Inc., Brink’s Home Security, Inc. and Brink’s, Incorporated (collectively, the “Opposer entities”), and (b) the individuals comprising all of the Opposer entities’ present and former (i) directors, (ii) officers, (iii) members, (iv) employees, (v) agents, (vi) representatives, (vii) attorneys, and (viii) others acting or purporting to act on behalf of any of the Opposer entities, whether employed or retained on a full-time, part-time, independent contract, commission, or other basis.

4. “Brinkmann” and “Applicant” means (a) The Brinkmann Corporation, and (b) the individuals comprising all of its present and former (i) directors, (ii) officers, (iii) employees, (iv) agents, (v) representatives, and (vi) attorneys, whether employed or retained on a full-time, part-time, independent contract, commission, or other basis.

5. “Document” means all items within the scope of FED. R. CIV. P. 34(a) and all forms of writings as defined in FED. R. EVID. 1001(1), and includes any reduction to tangible form, including any written, recorded or filmed matter and any computer, magnetic or optical memory or storage, of any communications, information, or data of any kind or nature, however produced or reproduced, including originals, drafts and copies, wherever located. For documents in the form of computer, magnetic or optical storage, this definition requires production of such documents in machine-readable or usable form (e.g., magnetic or optical disk or tape), as well as printouts of the information or data in the computer files or programs. This definition applies to all documents in your possession, custody, or control, or that of your officers, directors, agents, representatives, employees, and attorneys, whether employed or retained on a full-time, part-time, independent contract, commission, or other basis, irrespective of who generated, prepared, or signed the documents. A document is deemed to be within your control if you have

ownership, possession or custody of the document or a copy, or the right to secure the document or a copy from any person or public or private entity having physical possession of it.

6. “Thing” means any tangible item, including, but not limited to, mock-ups, specimens, models, prototypes, and samples of any device, product, or apparatus, or parts thereof.

7. “Brink’s Mark” means any trademark or service mark that includes the words “Brink’s” or “Brinks” in any manner or form, whether alone or in combination with any other word, name, symbol, or device.

8. “Brink’s Product” and “Brink’s Service” mean, respectively, any product and service advertised, promoted, distributed, offered for sale, sold, or provided by Hampton under any Brink’s Mark.

9. “Brinkmann Mark” means any trademark or service mark that includes the word “Brinkmann” in any manner or form, whether alone or in combination with any other word, name, symbol, or device.

10. “Brinkmann Product” means any product advertised, promoted, distributed, offered for sale, sold, or provided under any Brinkmann Mark.

11. “Pertaining to” means and refers to alluding to, analyzing, comprising, connected with, constituting, containing, concerning, discussing, describing, evidencing, incorporating, identifying, involving, memorializing, referring to, reflecting, regarding, relating to, responding to, showing, or in any other way referring to the subject matter referred to in the request. A request for documents and/or things pertaining to an allegation, or to a denial of an

allegation, in a pleading includes documents and/or things tending to support or to refute such allegation or denial.

12. “Identify” or to give the “identity” of means (a) in the case of a document, to state the type of document (e.g., letter, memorandum, license, etc.), the date it bears or was prepared or sent, the identity of the author, originator or sender, the identity of each person who received the document (whether or not named as an addressee), its subject and substance, the number of pages comprising the document, and the present location and the identity of the custodian of the document, and (b) in the case of a person, to state the name and present or last known street address, city and state of residence, and telephone number.

13. “Communication” means any written, oral, or other transmission of information between a sender and a recipient. Communication comprises any and all such means including speech and writings, as well as any and all means of electronic or optical signals of any kind, specifically including e-mail.

II.

INSTRUCTIONS

1. Rule 45(d)(1) of the Federal Rules of Civil Procedure provides that “[a] person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.” If you elect to produce documents as they are kept in the usual course of business, they should be produced in the boxes, file folders, bindings, or other containers in which the documents are found. The title, labels, or other descriptions of the boxes, file folders, binders, or other containers should be left intact.

2. Whenever appropriate, the singular form of a word shall be interpreted in the plural and vice versa; verb tenses shall be interpreted to include past, present, and future tenses; the terms “and” as well as “or” shall be construed either conjunctively or disjunctively, as necessary to bring within the scope of this subpoena any documents that might otherwise be considered outside their purview; and words imparting the masculine include the feminine and vice versa.

3. In producing the requested documents and things, you are required to furnish all documents and things available to you, including, by way of illustration only, and not by way of limitation, documents and things in the possession of your attorneys, or in the possession of your or their consultants, investigators, advisors, agents, or associates.

4. Rule 45(d)(2) of the Federal Rules of Civil Procedure provides that “[w]hen information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be expressly made and shall be

supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.” If any documents requested herein are withheld by you based upon a claim of privilege or work product, state as to each such document:

- (1) The basis for withholding the document;
- (2) The nature of the document withheld (e.g., letter);
- (3) The date of the document;
- (4) The identity of the author;
- (5) The identity of each recipient of the document or any copy hereof;
- (6) The length of the document in pages;
- (7) The location of the original and each copy of the document; and
- (8) The general subject matter of the document.

III.

DOCUMENTS AND THINGS REQUESTED

1. All documents and things pertaining to any business relationship with Brink's Network.
2. All documents and things constituting or reflecting any presentations, studies, analyses or investigations pertaining to Brink's Network or any Brink's Mark or Brink's Product.
3. All documents and things constituting or reflecting any proposals, negotiations, discussions or communications pertaining to any potential, proposed or actual license with Brink's Network for any Brink's Mark or Brink's Product.
4. All documents and things constituting or reflecting any proposals, negotiations, discussions or communications pertaining to any potential, proposed or actual amendments to any license with Brink's Network for any Brink's Mark or Brink's Product.
5. All licenses with Brink's Network for any Brink's Mark or Brink's Product.
6. All amendments to any licenses with Brink's Network for any Brink's Mark or Brink's Product.
7. Documents and things sufficient to identify each Brink's Mark ever used by Hampton and each Brink's Product manufactured, advertised, offered for sale or sold by Hampton (e.g., by product name and SKU) in the United States, from introduction to the present.

8. Documents and things sufficient to identify each channel of distribution (*e.g.*, bricks and mortar stores, mail-order, catalog, Internet, *etc.*) for each Brink's Product manufactured, advertised, offered for sale or sold by Hampton in the United States.

9. Documents and things sufficient to identify the amount of sales annually in dollars in the United States by Hampton of each different Brink's Product manufactured, advertised, offered for sale or sold by Hampton from introduction to the present.

10. A sample of each different advertisement or promotional materials ever used by Hampton for each different Brink's Product manufactured, advertised, offered for sale or sold by Hampton from introduction to the present.

11. Documents and things sufficient to identify all avenues (*e.g.*, print, television, radio, Internet, *etc.*) of advertising and promotion of any Brink's Product manufactured, advertised, offered for sale or sold by Hampton in the United States.

12. Documents and things sufficient to identify the amount of advertising and promotional expenditures annually in dollars in the United States by Hampton for Brink's Products manufactured, advertised, offered for sale or sold by Hampton from introduction to the present, broken down by type or category of Brink's Product (*e.g.*, locks, door hardware, lighting, *etc.*) if available.

13. Documents and things sufficient to identify the amount of royalty payments to Brink's Network annually in dollars in the United States by Hampton of each different Brink's Product manufactured, advertised, offered for sale or sold by Hampton from introduction to the

present, broken down by type or category of Brink's Product (e.g., locks, door hardware, lighting, etc.) if available.

14. Documents and things sufficient to identify the demographics of purchasers and prospective purchasers for each Brink's Product manufactured, advertised, offered for sale or sold by Hampton in the United States.

15. Documents and things sufficient to identify the marketplace competitors for each Brink's Product manufactured, advertised, offered for sale or sold by Hampton in the United States.

16. A representative sample of each type of Brink's Product manufactured, advertised, offered for sale or sold by Hampton (*e.g.*, lock, door hardware, lighting, *etc.*).

17. A representative sample of packaging for each type of Brink's Product manufactured, advertised, offered for sale or sold by Hampton (*e.g.*, lock, door hardware, lighting, *etc.*).

18. Documents and things sufficient to identify each retailer for each type of Brink's Product manufactured, advertised, offered for sale or sold by Hampton (*e.g.*, lock, door hardware, lighting, *etc.*).

19. All catalogs for any Brink's Product manufactured, advertised, offered for sale or sold by Hampton, from introduction of the product to the present.

20. All documents and things pertaining to quality control standards or requirements for any Brink's Product manufactured, advertised, offered for sale or sold by Hampton.

21. All documents and things pertaining to any communications between you and Brink's Network referring to quality control standards or requirements for any Brink's Product manufactured, advertised, offered for sale or sold by Hampton.

22. All documents and things pertaining to any trademark usage guidelines by Brink's Network for any Brink's Mark.

23. All documents and things pertaining to any communications between you and Brink's Network referring to trademark usage guidelines for any Brink's Mark.

24. All documents and things pertaining to any knowledge by Hampton of Brink's Network's federal applications or registrations incorporating BRINK'S.

25. Documents and things sufficient to identify the types of customer complaints associated with any Brink's Product manufactured, advertised, offered for sale or sold by Hampton.

26. All documents and things pertaining to Brink's Network, any Brink's Mark or Brink's Products not otherwise requested herein.

27. All documents and things pertaining to Hampton's knowledge of Brinkmann, Brinkmann's Products or Brinkmann's Mark, including any investigations.

28. All documents and things pertaining to Hampton's knowledge of any party other than Brink's Network or Brinkmann using a Brink formative mark, including any investigations.

29. All documents and things pertaining to Hampton's knowledge of the spin-off by The Brink's Company of Brinks Home Security Holdings, Inc.

30. All documents and things pertaining to the effect on Hampton of the spin-off by The Brink's Company of Brinks Home Security Holdings, Inc.

31. Documents and things sufficient to identify all individuals at Hampton involved in any licenses, license negotiations or communications between Hampton and Brink's Network.

32. Documents and things sufficient to identify all individuals at Brink's Network involved in any licenses, license negotiations or communications between Hampton and Brink's Network.

33. All documents pertaining to any communications between you and any persons referring to Brinkmann, any Brinkmann Mark or Brinkmann Product from 1983 to the present.

34. All documents pertaining to any communications between you and any persons referring to any other parties using any Brink formative mark.